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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of the Commission's	)	
Rules to Provide Channel Exclusivity	)	PR Docket No. 93-35
to Qualified Private Paging Systems	)	
at 929-930 MHz	)	

To: The Commission

COMMENTS OF MAP MOBILE COMMUNICATIONS, INC.

MAP Mobile Communications, Inc. ("MAP"), hereby comments on the Commission's proposal to amend its rules to grant channel exclusivity to qualified local, regional, and national paging systems in the 929-930 MHz band.[1]

MAP commends the agency's effort to modify its rules to encourage the development of a competitive mobile communications marketplace to meet the paging needs of eligible users. Nevertheless, the rules as proposed could actually defeat their very purpose by forcing existing licensees to curtail service and service expansion. Accordingly, MAP urges the agency to adopt application procedures to ensure

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[1] Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35, Notice of Proposed Rulemaking, FCC 93-101, released March 31, 1993 ("NPRM").

existing licensees that have committed extensive resources to the development and implementation of paging systems may enhance those operations. Specifically, MAP recommends that the agency allow licensees with existing facilities a one-year period from the adoption of a decision in this proceeding to expand their systems without threat of co-channel coordination from new applicants. This approach will satisfy the agency's goal to enhance 929 MHz operations yet not strand the already substantial investment of existing licensees.[2]

BACKGROUND

MAP Mobile Communications, Inc., entered into the communications service industry two years ago as a reseller of alphanumeric paging services and a provider of operator assistance services. MAP now resells alphanumeric paging service throughout the United States.

Early in 1992, MAP decided to construct and operate its own system and applied for authorizations in the 929 MHz band as a private carrier paging licensee. During July of 1992, at about the same time it began receiving initial licenses to construct facilities, MAP began negotiations with Metagram America Inc. ("Metagram"), for the acquisition by Metagram's alphanumeric paging system operating on 929.9875 MHz. The negotiations were completed late in March of 1993.

Metagram is a pioneer in the provision of alphanumeric private carrier paging services. Long before the possibility of exclusivity rendered 929 MHz channels valuable, Metagram applied for a PCP channel and, despite difficult economic times during the recession, now operates 240 transmitter locations providing service to thousands of subscribers in over 30 markets throughout the United States.[3] On March 31 and April 1, 1993, MAP applied for FCC consent to the

[3] Monthly gross revenues from the Metagram system exceed one million dollars. Such a system also incurs major monthly costs. The challenge that MAP has assumed is to enhance the service now offered on the system, expand its coverage, and improve operating efficiency through the integration of the Metagram facilities with the infrastructure MAP has developed to support alphanumeric paging.

assignment of Metagram's PCP facilities to its wholly-owned subsidiary MAP Paging Co., Inc. Those applications are pending at the FCC. MAP [redacted] system."[7] Any other position, as the agency has appropriately acknowledged, could impair the ability of some PCP operators to develop or expand their systems, thereby "inadvertently stranding investment in ongoing projects while delaying the ultimate provision of paging service to customers."[8]

Moreover, adoption of a proposal that does not recognize existing licensees would be inequitable, as it would penalize licensees that have a proven record of actual construction and operation in the public interest but have not yet met the nationwide exclusivity criterion. Ironically, such an approach would elevate promise over performance. Metagram already has constructed 240 transmitter locations. It may be eligible for local and regional exclusivity in many areas.[9] Under the rules as proposed, however, Metagram would be denied nationwide

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[7] Id. at ¶ 37.

[8] Freeze Order, ¶ 2. Although this Order dealt with a freeze on applications pending a decision in this proceeding, the principles discussed therein are equally applicable to applications filed after a decision is issued.

[9] The Commission has sought comment on the appropriate number of transmitters needed to obtain local exclusivity. NPRM, ¶ 20. In some locations, fewer than six transmitters will provide adequate service because of terrain and power considerations. In others, more than six may be necessary. For nationwide systems, the primary criteria should be the provision of service to subscribers in all of the proposed regions, in at least 50 markets, including 25 of the top 50 markets with no less than 300 operating transmitters overall.

exclusivity in favor of the mere representations of other applicants or speculators.

MAP, as the successor-in-interest to Metagram's paging system, would find itself exactly in this predicament should the agency not adopt rules that carefully balance the interests of existing licensees with those of potential licensees, as discussed below.

B. The Agency Should Afford Existing Licensees An Adequate Opportunity to Earn Exclusivity

To avoid the perverse result that will otherwise occur -- to deny exclusivity to existing licensees -- MAP recommends that the agency modify and clarify its rules regarding the processing of applications for the expansion of existing systems. First, MAP urges the agency to permit existing licensees to apply for additional transmitter locations on their existing channel to expand their systems into new areas. This would allow existing licensees to respond to new regulatory requirements that may not have matched the reality of business conditions during the recent recession. Plans could thus be implemented on the basis of known requirements rather than speculation as to what the requirements will be.

Second, if exclusivity is not preserved on a channel such as 929.9875 MHz, then existing licensees who have constructed widespread major systems should be accorded shared exclusivity. In the case of nationwide systems, such shared exclusivity should be nationwide. While the first principle of this proceeding should be to preserve exclusivity where it exists, the second principle should be to manage shared exclusivity on a fair and equitable basis.[10] Thus, MAP does not endorse the issuance of additional authorizations to others on the already heavily utilized 929.9875 MHz channel. Indeed, MAP submits that the public interest would be served far better without the placement of another system on 929.9875 MHz. Nevertheless, should the Commission determine that, notwithstanding this exclusivity proceeding, it is in the public interest to place another large system on this frequency, then shared exclusivity should apply. It would be ironic, indeed, for bare licenses to take precedence over 240 operating sites in the determination of exclusivity.

[10] For those systems that have not achieved the benchmarks determined for exclusivity, exclusivity can be preserved by according the licensee one year within which to meet the criteria adopted ultimately in this proceeding.

Third, the agency should not allow co-channel coordination of new licensees in areas currently served by existing licensees.[11] This requirement will partially protect existing licensees from speculators or "greenmailers." In fact, the Commission noted that it is appropriate to accommodate licensees who are already operating systems and have made investments.[12]

Fourth, applications for the purpose of expanding existing systems should be accepted for a one-year period beginning with the release of the FCC's decision in this proceeding. The determination of earned exclusivity, however, should be based on the number of stations actually constructed prior to the end of this one-year period.[13] This

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[11] "New" licensees would be those entities that did not hold authorizations for the channel upon adoption of a report and order in this proceeding.

[12] NPRM, ¶ 35.

[13] MAP also urges the Commission to address what is meant by the term "construction." Currently, it appears that as many as eight different licensees (if not more) could share a multi-frequency transmitter and thereby claim to have "constructed" facilities on eight separate channels. Under such a scheme, each licensee could seek a nationwide system and claim to have constructed it while providing only about 38 transmitters, the pro rata 1/8 share of 300 transmitters for a nationwide system. Worse still, the FCC's proposed slow growth policy will allow all eight licensees three years to construct their systems when they would actually construct only about 38 transmitters. Thus, such licensees might never construct 300 individual transmitters. While there are situations in which multi-frequency transmitters may be in the public interest, it is difficult to conceive of situations in which a single

period -- which is less than the three years proposed by the FCC for construction of some systems -- will afford existing licensees a defined period as well as an incentive to complete their expansion plans. More importantly, it will ensure equitable treatment of all parties, including those that may have been privy to NABER's proposed petition for rulemaking in this proceeding before it was filed with the agency.[14]

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licensee would have a legitimate need for more than two frequencies in the same transmitter if the facilities are actually used to provide service instead of warehouse spectrum. MAP therefore believes the FCC should not count the same transmitter more than twice for more than one licensee when determining eligibility for exclusivity. MAP notes that the proposed rules for local exclusivity appear to prohibit counting co-located transmitters more than once. See Proposed 90.495(a)(ii). This requirement should be applied as well to regional and nationwide licensees. Finally, the "co-located transmitter" provision should be clarified to prohibit multiple transmitters on the same frequency at the same location but to allow multiple transmitters on different frequencies at the same site.

[14] MAP understands that when trade associations determine to make such filings it is only natural -- and likely a necessity -- that many within the industry know in advance of the plans. However, absent some reasonable opportunity to complete expansion of existing systems in accord with the rules as adopted, the result will be to freeze those systems that are actively serving customers and seeking to grow.

CONCLUSION

For the foregoing reasons, MAP urges the Commission to strike a fair balance among existing licensees that are currently operating extensive paging systems and potential licensees or speculators whose efforts could serve to curtail those existing operations. Licensees that pioneered PCP operations and their subscribers should not be penalized by rules that do not provide an adequate opportunity to earn exclusivity.

Respectfully submitted,

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